

MBE LIAISON TRAINING

Presented by Governor's Office of Minority Affairs Staff



March 24, 2016 @BSU

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AGENDA

1. **Welcome**
2. **Governor's Office of Minority Affairs Staff Changes**
3. **Reporting Updates – MBE Compliance Manager, Lisa Sanford**
4. **GOMA Outreach Announcements – Outreach Manager, Eduardo Hayden**
7. **Best Practice Reminders – Director MBE Compliance, Janice Montague**
8. **SBR Work Group - Director MBE Compliance, Janice Montague**
9. **Legislative Update – Director Policy & Legislative Affairs, James King, Jr.**
10. **False Claims Act – Director False Claims Unit, Shelly Martin**



WELCOME

Moderator:
Lisa Sanford
MBE Compliance Manager



GOMA STAFF

- Special Secretary, Jimmy Rhee
- Assistant Special Secretary, Herb Jordan
- Janice Montague, Director MBE Compliance
- Lisa Sanford, Manager MBE Compliance
- Gerald Stinett, Manager VLT Compliance
- James King, Jr., Director Policy & Legislative Affairs*NEW*
- Chantal Kai-Lewis, Manager MBE Compliance & BPW
- Alison Tavik, Director Communications
- Eduardo Hayden, Outreach Manager*NEW*
- Pamela Gregory, Special Assistant



CONTACT INFO

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Director Policy & Legislative Affairs

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Eduardo Hayden

Outreach Manager

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AGENCY DASHBOARD MEETINGS

- Maryland is Open for Business
- Customer Service is Job #1
- Revived *Scorecard* Assessment Tool





MARYLAND
OPEN
for **Business**



BUSINESS OMBUDSMAN

ROGER CAMPOS

Appointed by Governor Larry Hogan as the first Business Ombudsman in the State of Maryland, our Office is dedicated to supporting the needs of businesses in their interaction with state agencies. We serve as a “good will” business ambassador and liaison between businesses, economic development organizations, communities and federal, state, and local government.



<http://governor.maryland.gov/ombudsman/>

REPORTING UPDATES

- **New Deadlines:**
- **SBR Strategic Plan (Narrative) – June 30th**
- **MBE Strategic Plan (Narrative) – June 30th**
- **Recurring Procurement Forecast (Excel Template) – June 30th**
- **MBE Annual Report – September 30th**
- **SBR Annual Report – September 30th**
- **New Form3 Payment Web-based Portal**
- **ANSWERS INSTRUCTIONAL GUIDE**
<http://doit.net.md.gov/servdesk/fmisdocs/Documents/ANSWERS%204.0.pdf>
- **MBE REPORTING MANUAL in DRAFT**

OUTREACH ANNOUNCEMENTS

- NEXT Ready, Set, Grow
April 7, 2016 Salisbury, MD
- GOMA to HOST SMALL PROCUREMENT EVENT
*Liaison/Outreach to Attend
 - Bring list of small procurements
 - Bring list of regular credit card purchases
- SEND YOUR OUTREACH CALENDAR EVENTS
TO GOMA

Eduardo.Hayden@maryland.gov



BEST PRACTICES - PRG

Procurement Review Group – MBE Liaison Participation

- Liaison is a mandatory member of the PRG; BPW Advisory 2001-1:

*“A Procurement Review Group must include the following members:
The agency's chief procurement official or a senior-level procurement official designated to act in the place of the chief procurement official; and
The agency's MBE liaison officer or a senior-level alternate designated to act in the place of the MBE liaison officer.”*

- PRG must be signed by the individuals who actually participated in the PRG discussions
- Agency is responsible for explaining the rationale for PRG findings and final goal(s) if questioned by GOMA or the BPW
- Focus should be on quality vs quantity of participation
- GOMA's advice to liaisons regarding PRG involvement

BEST PRACTICES-MBE FORMS

MBE Forms Review – MBE Liaison Participation

- Liaison should participate in review of all MBE-related forms received from bidders/offerors
- COMAR 21.11.03.12 (Amending Participation Schedule); after award, must have prior written consent of MBE liaison to change Participation Schedule
- COMAR 21.11.03.12-1B (Commercially Useful Function); quality vs quantity participation
- Waiver review – should be a collaborative effort (liaison, AAG, PO and agency head); copy of written determination needs to come to GOMA

WAIVERS

- COMAR 21.11.03.11D
- Waiver process applies to overall goals and subgoals
- Best Practice – Liaisons are part of waiver determinations



SBR WORK GROUP

- PENDING – Significant Changes to SBR Program (HB 788)



- Work Group Monthly Meetings
- First Meeting April 2016

LEGISLATIVE UPDATE

HB 353	Reorganization of State Procurement
HB 403/SB 826	Construction Contracts – Change Orders
HB 788	Procurement – Small Business Reserve Program-Program Oversight and Continuation



The Maryland False Claims Act

Shelly Marie Martin, Director, False Claims Unit



Why You Want to Keep
Shelly's Number on Speed Dial

The Maryland False Claims Act

- General Provisions §§ 8-101 through 8-111
- Prohibits knowingly engaging in nine types of false or fraudulent conduct
 - Submission of false claims
 - Making or use of false statements/records
 - Failure to pay money to the government
- Preponderance of the evidence

What is a false or fraudulent claim?

- Something that if known, the government would not have paid
- Work not completed
- Standards not met
- Violations of significant policies
- Did the government get what it paid for?



MBE Issues

- A company uses false information to obtain MBE status
- An MBE submits a false claim to the prime contractor
- Prime contractor does not use MBE subcontractor
 - False representations of who performed the work
 - MBE does not function as an independent entity
- Non-payment of MBE invoices

The Maryland False Claims Act

- What is not covered
 - Taxes
 - Wages to government employees
 - Income supports

Damages, § 8-102 (c)

- Civil penalty of up to \$ 10,000 for each violation
- Up to treble damages
- Factors to determine penalty amounts are enumerated in § 8-102(d)

Limitations

- Six years from the date of the violation
- Three years from discovery/discoverable but not more than ten years from the date of the violation
- Limitations does not run against the state for common law causes of action

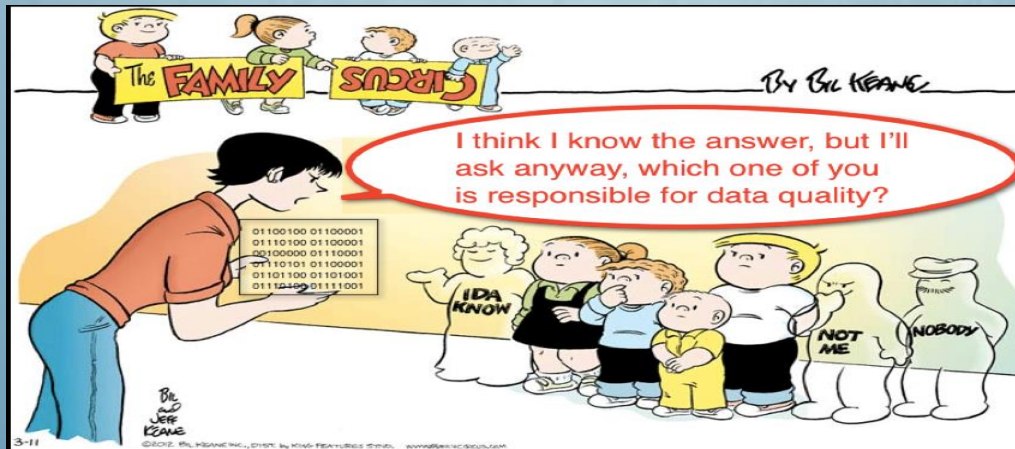
Role of the False Claims Unit

- Investigate and litigate false claims cases
- Advise and assist with investigation and litigation
- Negotiations and trials
- Statistical tracking
- Annual report



Knowingly False or Fraudulent

- § 8-101(f)(1) “Knowing” or “knowingly” means, . . .
 - (i) has **actual knowledge** that the information is false
 - (ii) acts in **deliberate ignorance** of the truth or falsity of the information; or
 - (iii) acts in **reckless disregard** of the truth or falsity of the information
- Negligence or mistakes are not “knowing”



Knowingly

- Extension of gross negligence, gross negligence plus, grossly irresponsible
- Palpable failure to meet the appropriate standard of care



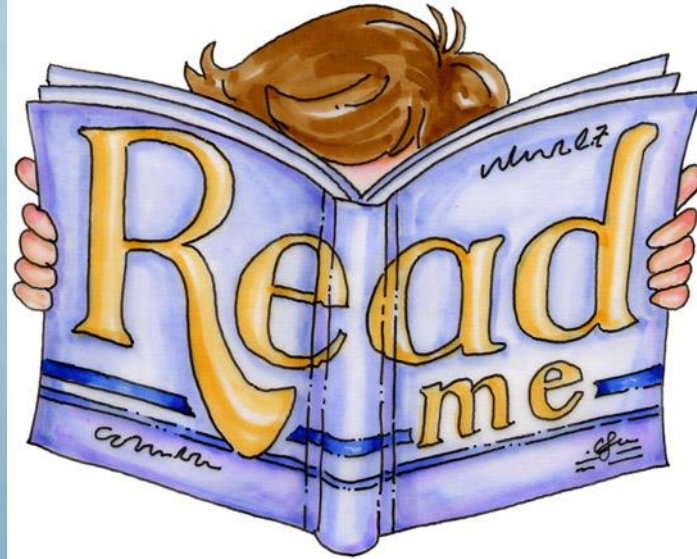
Knowingly

- Such sloppy or unsupervised work that is likely to result in overcharges
- One has suspicion that something is wrong and avoids making reasonable inquiries to avoid learning the truth



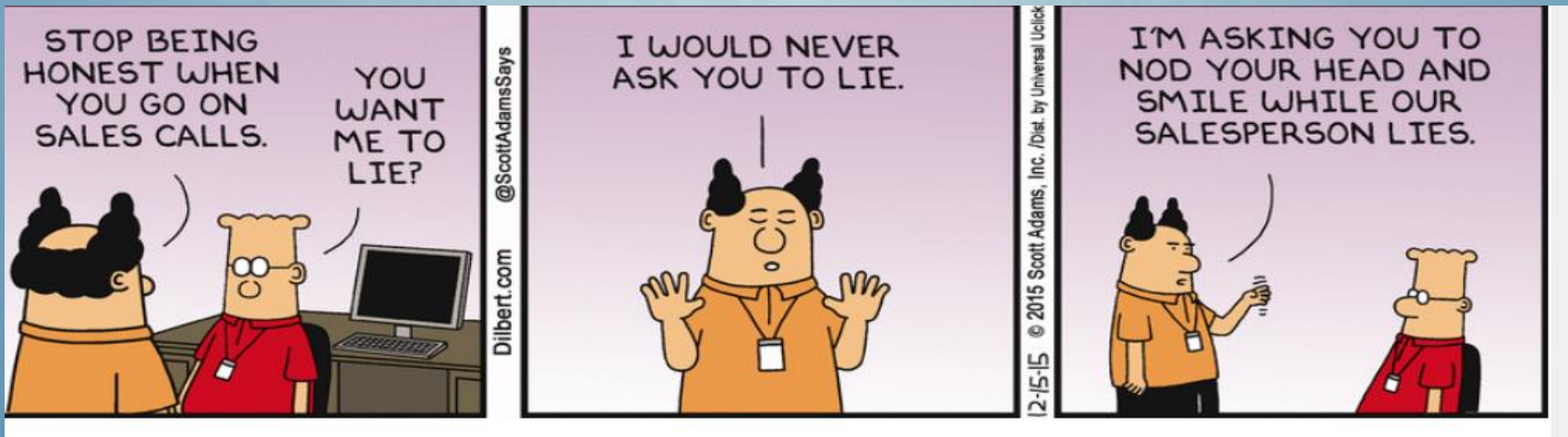
Knowingly

- Tip – many recipients of State funds are obligated to know and comply with all applicable rules and regulations



Knowingly – Red Flags

- Bids/RFPs that are far above or below competitors
- Early or frequent requests for modifications
- Refusal to do work in the contract/grant



Knowingly – Red Flags

- Sudden increase in costs or claims
- Prior warnings from the State
- Paperwork issues
- Failure to return overpayments



Knowingly – common defenses

- Someone from the State said this was OK
- We've always done it this way, and no one's complained before
- The State paid the claim so everything must have been OK
- This is the way we do it everywhere else
- The rules are just too complicated
- Advice of counsel/experts

Knowingly – examples

- A contractor is required to staff a contract with personnel who have been certified. In working with the contractor, agency personnel become skeptical that the contractor's staff are certified.
- Some of the contractor's staff complain to agency personnel that the contractor has not paid its staff for working overtime.

Knowingly – examples

- A contractor is hired to renovate a State building. The contract requires that the building materials used in the project must be lead-free and VOC-free to the extent possible. The contractor uses leaded paint and carpet containing a high level of VOCs.
- The contractor was required to use an MBE subcontractor, but cannot produce records to verify the MBE's involvement.

Investigation Process

- Referral to the False Claims Unit
- Discovery is available before filing suit to investigate the allegations § 8-104(b)(2)
- Document review
- Witness interviews
- Usually enter into settlement discussions with target before filing suit

Two Types of Cases

- Cases initiated by the government § 8-103
- Cases filed by a whistleblower § 8-104
 - Whistleblowers are known as relators
 - Actions are known as *qui tams*
 - *Qui tam pro domino rege quam pro se ipso in hac parte sequitur*
 - Who sues in this matter for the king as well as for himself
- State of Maryland ex rel Smith v. Doe

FCA v. FHCA

- False Health Claims Act effective October 2010
- Health Gen. §§ 2-601 through 2-611
- Limited to State Health Plans and Programs
- Key differences-under FHCA, state is entitled to attorney's fees, coverage from 2010 through 2015

Federal False Claims Act

- 31 U.S. §§ 3729 through 3732
- Key differences
 - Mandatory penalties
 - Relator's knowledge for statute of limitations
 - Dismissal of declined *qui tams*
- Joint investigations when federal funds are involved

I Think I Have a False Claims Case, What Do I Do?!?!

- Contact Shelly Martin, False Claims Unit
 - smartin@oag.state.md.us
 - (410) 576-6522





Questions?



Thank You